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OCTOBER TERM ██████████ 1961

No. 9 Original

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STATE OF ARIZONA, *Complainant,*

VS.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, and COUNTY OF SAN DIEGO, CALIFORNIA, *Defendants,*

UNITED STATES OF AMERICA, *Intervener,*

STATE OF NEVADA, *Intervener,*

STATE OF NEW MEXICO, *Impleaded,*

STATE OF UTAH, *Impleaded.*

**THE STATE OF NEVADA'S EXCEPTIONS TO THE
REPORT OF SPECIAL MASTER, SIMON H. RIFKIND,
DATED DECEMBER 5, 1960; AND THE RECOMMENDED
DECREE INCLUDED THEREIN.**

ROGER D. FOLEY
Attorney General
Carson City, Nevada

W. T. MATHEWS
Chief Counsel
331 Gazette Building, Reno, Nevada

R. P. PARRY
CLIFFORD E. FIX
PARRY, ROBERTSON & DALY

Special Counsel
Fidelity Bank Building, Twin Falls, Idaho
Counsel for State of Nevada.

February 20, 1961.

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REPORT OF SPECIAL MASTER, SIMON H. RIFKIND,
DATED DECEMBER 5, 1960; AND THE RECOM-
MENDED DECREE INCLUDED THEREIN.**

The State of Nevada, Intervener, excepts to the Report of Special Master, Simon H. Rifkind, dated December 5, 1960, and the Recommended Decree therein included, filed in the above-entitled action, in the particular respects and as to the specific points as follows:

I.

The Special Master erred in providing in Paragraph II(B)(7) of the proposed Decree (p. 349) that "mainstream water shall be delivered to users in * * * Nevada only if contracts have been made by the Secretary of the Interior pursuant to Section 5 of the Boulder Canyon Project Act for delivery of such water; * * *."

This provision of the Decree, so far as relates to Nevada may be an inadvertence inasmuch as the report itself (p. 210) finds that contract between the State of Nevada and the Secretary of the Interior (App. 6 and 7 to the Report, pp. 409-422) "does not require additional sub-contracts between each water user and the Secretary of the Interior."

II.

The Special Master erred in finding in the Report, at pages 234 to 237, 311 and 312, and in Paragraphs II(B)(5) and (6) of the Recommended Decree, that a part of Nevada's allocation of water may be used to supply the so-called "present perfected rights" in other States, in years when the allocations of such other States are not sufficient to supply said rights.

And as an alternative, the Special Master erred in not providing a minimum figure below which the allocation of the State of Nevada could not be reduced, if, and when, it ever becomes necessary to take water away from Nevada's allocation for supplying so-called "present perfected rights" in other States.

III.

That the Special Master erred in failing to recommend in his Report, or provide in his Recommended Decree for the appointment of a Commissioner with the power to supervise the operation of the Colorado River in the Lower Basin and the delivery, annually, among the various parties of the waters awarded to them by the Decree herein. (Report, p. 314)

IV.

That the Special Master erred in failing to recommend in his Report or include in his Recommended Decree, provision for the promulgation of Rules and Regulations by the Officer in charge of operating the Colorado River, after the Decree is entered herein, setting forth in detail the manner, method and plan, including time schedules, to be used annually in regulating stream flows, in managing and controlling regulatory structures and in allocating and distributing water to the parties entitled thereto; and also providing for cooperation with representatives of affected States in accordance with Section 16 of the Boulder Canyon Project Act (45 Stat. 457; 43 USC 617).

V.

The Special Master made the water allocations recommended in his Report and in his Recommended Decree to be awarded the State of Nevada under a different theory of law and interpretation of the Colorado River Compact and the Boulder Canyon Project Act, than that urged by Nevada in its pleadings, proof and prior Briefs herein. The State of Nevada expressly reserves the right, if it appears necessary during the subsequent proceedings herein, to again urge these contentions

which have been discarded by the Special Master. By not excepting to the basic theory adopted by the Special Master in his Report and Recommended Decree, Nevada is not waiving the right to assert that she is entitled to the quantity of water awarded her by the Special Master, if not a larger quantity, under the theory urged by Nevada in her pleadings, proof and prior Briefs herein, or under any plan of distribution of the waters of the Colorado River.

CONCLUSION

In accordance with the Order of this Court dated January 16, 1961, the foregoing is,

Respectfully submitted,

ROGER D. FOLEY,
Attorney General

W. T. MATHEWS,
Chief Counsel

R. P. PARRY,
CLIFFORD E. FIX,
Special Counsel

Counsel for State of Nevada.

Dated February 20, 1961.